

BEFORE THE CITY OF SHORELINE HEARING EXAMINER

In the Matter of the Appeals
of New Friends of the Richmond Beach
Saltwater Park Bluff Trail, Anne
McKinley and Sally Swantz
From the Issuance of a Grading
Permit and DNS for the Upper
Bluff Trail – Richmond Beach
Salt Water Park

FINDING OF FACT,
CONCLUSIONS OF LAW
AND DECISION

DECISION

The appeal of New Friends of the Richmond Beach Saltwater Park Bluff Trail from the issuance of a grading permit and a declaration of nonsignificance (DNS) for the Upper Bluff Trail Improvements is denied.

The appeals of Anne McKinley and Sally Swantz from the issuance of a grading permit and DNS for the Upper Bluff Trail Improvements are denied.

INTRODUCTION

These are appeals from the issuance of a grading permit and associated declaration of nonsignificance (DNS) to modify an existing pedestrian trail in Richmond Beach Saltwater Park by lowering portions of the trail 1 to 4 feet below the existing grade. Other modifications include surfacing the trail with crushed rock, installation of low earthen berms and/or landscape plantings to further screen the trail from adjacent homes, and phased removal of invasive plant species on the adjacent steep slope.

The appeals were filed on July 13, 1999. The hearing on the appeals was set for July 28, 1999. On July 21, 1999, appellant New Friends asked for a continuance of the date of the hearing to August 12, 1999, citing a need to hire an attorney to replace the group's existing attorney who was unavailable, and a need to engage expert witnesses. On June 23, 1999, City employee Jon Jordan responded to the motion for continuance, urging that the motion be denied because delays would prejudice the City in implementing the project in unfavorable weather. On July 26, 1999, the undersigned Hearing Examiner Pro Tem denied the motion.

The hearing was convened on July 28, 1999 at 7:00 PM in the Shoreline Community Center. The appeal of New Friends was managed by Michael Painchaud. The appeals of Anne McKinley and Sally Swantz were managed by R M. Erickson. Painchaud and Erickson are not attorneys. Painchaud is a designer of mathematical models and systems and Erickson is a landscape architect and urban planner. The city's defense of the permit and DNS was managed by City Attorney Ian Sievers.

The following witnesses were sworn and testified:

Gabe Snedeker, City Planner
Robert M Erickson, Landscape Architect
Michael Painchaud, for Appellant (New Friends)
Duane Edwards, Landscape Architect
David Williams, Geotechnical Engineer
Michael Gillespie, City Engineer

Nancy Mohrman, for Appellant (New Friends)
Colleen Clayton, Landscape Architect/
Engineer
Daniel Bretzke, City Planner
Kristoff Bauer, Assistant to City Manager

The exhibits listed in attachment A were offered and admitted.

At the conclusion of the hearing, the City asked for an opportunity to review and respond to the report of Colleen Clayton. The request was granted, provided the response was filed by August 4, 1999. A

declaration of Daniel Bretzke was filed on that date. In that declaration, Bretzke analyzed the report and advised that the city had adopted four of the recommendations of the Clayton report. Final argument of the appeals was set for 2:00 PM on August 10, 1999 in City Hall. On that date, Faith Lumdsen, attorney for New Friends, Robert Erickson and Ian Sievers summarized their respective positions for the Examiner. The question whether the project area was mapped as an "erosion hazard area" was answered in the negative by letter from land use planner Gabe Snedeker, dated August 11, 1999.

Following these presentations, the appeals were deemed submitted. From the foregoing, the Examiner makes the following:

FINDINGS OF FACT

1. Richmond Beach Saltwater Park is a former sand and gravel excavation site located on Puget Sound between the Richmond Beach neighborhood and the Innis Arden development to the south and east. The upper bluff pedestrian trail, which is the subject of these appeals, is located within the park along the top of the sand and gravel excavation. The trail may be accessed from the intersection of NW 190th Street and 20th Avenue NW. The trail provides a sweeping, panoramic view of Puget Sound and the Olympic Mountains.
2. The upper bluff trail is about one-quarter mile in length and is located between the excavated area and the homes in Innis Arden. Steep slopes extend below the trail to the west.
3. Persons walking along the trail can see the houses to the south and east, and residents of the houses can observe those on the trail. With increased use of the trail, pressure to separate the two land uses culminated in a decision to lower the elevation of the trail and construct berms between the trail and the adjacent homes. This would create a visual barrier. It was proposed that the trail be lowered from one to four feet below the existing grade by excavating approximately 2,000 cubic yards of material, which would be re-used to level the trail and construct the berms. Disturbed areas would be re-seeded with native grasses. Topsoil would be imported for vegetative and landscape plantings. Multiple layers of drought tolerant shrubs would be planted along the east and north boundaries of the park. The alignment of the trail would not be significantly altered. Additional seating and trailhead improvements, including a kiosk for interpretive materials, would be installed.
4. In addition to the trail improvements, vegetative management activities would be conducted on the adjacent steep slope. Invasive, non-native vegetation would be removed in phased, horizontal segments and replaced with low, native or drought tolerant vegetation. Dead, dangerous or diseased trees would be removed.
5. The applicant, Department of Public Works, sought a grading permit from the Department of Planning and Development Services to perform the proposed work on the upper bluff trail. During the initial comment period, the proposal was met with intense public interest and opposition. As a result, the Director of Planning and Development Services asked the City's hearing examiner, Robert Burke, to conduct an open record hearing on the proposal. The hearing was converted to a public meeting, and the hearing examiner on June 17, 1999 issued a report to the Director of Planning and Development Services recommending that the grading permit and associated DNS be approved, subject to 10 mitigating conditions.
6. On or about June 29, 1999, the Director of Planning and Development Services issued the grading permit and DNS, subject to conditions. In addition to compliance with the city's ordinances and regulations, the Director required applicant to:
 - (a) provide detailed calculations of the amount of cut and fill, the amount of excavated materials to be used on-site and/or removed and the amount and type of imported material ;
 - (b) coordinate the placement of the berm with existing and proposed private improvements at lots 7,8 and 9. Applicant need not modify or adjust its grading plan;

- (c) show the location and design of the drip irrigation system, submit water use calculations and comply with city ordinances and a geotechnical review letter;
 - (d) provide written assurance that all private encroachments have been resolved;
 - (e) conform to all recommendations of geotechnical engineering reports and provide a qualified engineer to observe construction.
7. On July 13, 1999, an appeal of the grading permit and DNS was filed by New Friends of the Richmond Beach Saltwater Park Bluff Trail (New Friends), a nonprofit organization registered with the state of Washington. The grounds of the appeal and the relief requested were:
- (a) Construction of a large berm in a protected steep slope area is prohibited by Section 18.24.310 of the Shoreline Municipal Code (SMC); (the City cited SMC 18.24.208(d)(2) to support its authority to construct a trail in a steep slope buffer.);
 - (b) A vegetative management plan should have been available to citizens prior to the decision;
 - (c) A declaration of significance (DS) should have been required, limited to earth, water, plants and animals, because of significant adverse environmental impacts; and
 - (d) As an alternative to a DS, the proposal should be remanded to supplement the record to support the present decision and the adequacy of mitigation.

Appellants asked that the permit be denied insofar as it goes beyond what can reasonably be considered repair or construction of a trail; that the examiner reverse the DNS and require an EIS, and that he remand the proposal to the Planning and Development Services Department to supplement the record and review and revise the conditions to ensure that effective mitigation of expected environmental impacts will occur.

8. New Friends are concerned with three topics: grading, procedure and erosion control. They argue that any construction within 10 feet of a steep slope violates SMC 18.24.310. They suggested that David Williams, an engineer for the current consultant and a former employee of the prior consultant, had a conflict of interest in reviewing the work of his former employer. The city argued that this sort of relationship was commonplace and not a violation of professional ethics.
9. New Friends argue that the measurements in the grading plan are in error and should be redone. They argue that doing only two test bores in the path was insufficient. The city disagreed, arguing that they could look at the face of the sand and gravel excavation to understand the composition of the subsurface of the trail.
10. New Friends ask that the vegetation management plan be revised, to include a complete list of plant material, details about the physical aspects of planting and hydroseeding, more details on erosion control and seasonal restrictions.
11. New Friends offered the testimony of Colleen Clayton, a soils engineer, who submitted a report which she prepared after a week's investigation. She offered many suggestions, especially regarding grading and erosion control. After the hearing, it was decided to adopt four of her recommendation in carrying out the project:
- (a) Additional fill would be provided in the trail loop area to bring the trail into compliance with the handicap accessibility standards;
 - (b) Require polymer additives to the hydro-seeding;
 - (c) Require straw or mulch cover of exposed areas if the project extends into the wet season as well as reserve the right to impose additional measures deemed necessary to control runoff and erosion; and

- (d) Revise construction limits to include silt fencing and show silt fencing one to two feet below the area of cut.
12. New Friends argue, and the City agrees, that the risk of erosion may be minimized by doing the work rapidly, with adequate supervision. New Friends warns that any delay, such as by legal action, would jeopardize the project.
13. Also on July 13, 1999, an appeal was received from Anne McKinley and Sally Swantz, adjacent property owners of the upper bluff trail. The appeals were filed on behalf of appellants by R. M. Erickson, landscape architect, who asserted that the proposed improvements involved significant environmental impacts upon appellants' properties, Lots 8 and 9, Innis Arden, including noise, new park use and safety which has not been mitigated by the current construction documents. Appellants ask for the following relief:
- (a) Modify the plans to allow a low safety retaining wall at Lot 8;
- (b) Modify the grading plan at Lot 9 to remove all grading and site work which may alter the existing surface drainage along the property line that may trap or impede the flow of water.

Appellant McKinley asks that the grading adjacent to her property be such that she may install a five-foot retaining wall at her own expense. The City refused to alter the grading plan and remove the 750 cubic yards of material which would be required by the modification. The City argues that there is no room for this much material on the site and that it would have to be removed. Further, the project would have to wait for a permit to be issued for the wall.

Appellant Swantz is concerned the existing grading plan will result in impounding storm water on or near her lot 9. She feels that the proposed berm is in the wrong place. She asks that the proposed contours be changed and plantings be relocated so that water is not trapped on or near her lot. The city assures her that the grading will be done in a manner which does not impound water behind the berm and on or near her property.

14. The work under the grading permit includes the following:

Re-grading of the existing topography along approximately 800 lineal feet of the existing trail corridor, balancing cut and fills on site, depth of excavation and subsequent uphill berming not to exceed 5 feet in depth. Total estimated earthwork is approximately 2,000 cubic yards.

Re-creation of the existing gravel trail by placement of 3 inches minimum depth of crushed rock surfacing.

Extension of the trail by a short loop, with a total length of 300 lineal feet, at the southerly end of the existing trail. The loop has been extended to comply with ADA standards.

Planting of 6-foot wide (double row) shrub buffer along abutting property boundaries. The shrub buffer shall be irrigated with low volume, drip application system.

Grass planting, by hydroseed methods, for all soil surfaces disturbed by earthwork activities. All hydroseed grass areas shall first receive imported topsoil one inch in depth to provide appropriate germination environment.

All associated temporary and permanent erosion and sedimentation control practices associated with the project.

Other site amenities, including benches, fencing and trailhead improvements.

15. A sensitive areas special study was prepared by Cosmopolitan Engineering Group, dated March 30, 1999, to identify and characterize the sensitive areas (steep slope hazard areas) within the park and to describe measures which will be incorporated into the proposed trail improvement project to prevent adverse environmental impacts. Earthwork practices to be followed for the project will follow the guidelines set forth in the Limited Geotechnical Exploration and Analysis of Giles Engineering Associates, Inc. According to this report, the site will support the proposed improvements without adverse environmental impacts.

A vegetation management plan outlines ongoing maintenance and planting practices to ensure health and stability of the adjacent hillside. This plan recommends a regular maintenance and management program to eradicate invasive species, removal of dead, damaged or diseased vegetation, and planting of drought tolerant native species. It is the conclusion of the report that these management and maintenance practices will ensure that the project will be implemented without adverse environmental impacts.

16. The Park Department will take over vegetation management after the project is constructed, and will install the new plantings on the steep slope.
17. Any conclusion of law deemed to be a finding of fact is hereby adopted as such. Any factual statements made in the introduction are adopted as findings of fact.

From the foregoing findings of fact, the Examiner makes these:

CONCLUSIONS OF LAW

1. The Hearing Examiner Pro Tem has jurisdiction over the parties and subject matter of these appeals. City of Shoreline Resolution 130.
2. These are appeals from issuance of a grading permit and associated DNS issued by the Director of Planning and Development Services on June 30, 1999. The burden of proof that either of these decisions was in error is on appellants.
3. The City has adopted King County Code Ch. 16.82 to serve as interim grading regulations. A copy of this text is included in Attachment F to Appendix D. KCC 16.82.060 sets forth the permit application requirements. Subsection D of that section provides:

- D. Granting of Permits. 1. The director shall determine if the proposed grading will adversely affect the character of the site for present lawful uses or with the future development of the site and adjacent properties for building or other purposes indicated by the comprehensive plan, the shoreline master program, and the zoning code.

Section 16.82.100 sets forth operating conditions and standards of performance. It provides that the slopes of cuts and fills shall not be steeper than is safe for the intended use and shall not exceed two horizontal to one vertical, unless otherwise approved. Disturbed areas shall be prepared and monitored to control erosion, as soon as practical. Unsuitable material shall be removed.

4. The project is in a "sensitive area", as there is potential for landslide hazard. Requirements that are more stringent apply. KCC 16.82.100 The Director must determine whether any proposed alteration to the sensitive area is necessary and whether the mitigation and monitoring plans and bonding measures are sufficient to protect the public health, safety and welfare consistent with the goals, purposes, objectives and requirements of Ch. 18.24.

Section 18.24.110 requires a sensitive area special study when development is proposed in a sensitive area. Section 18.24.150 requires a vegetative management plans when preservation of existing vegetation is required by Ch. 18.24.

5. WAC 197-11-330 provides that an environmental impact statement (EIS) is required for proposals for major actions significantly affecting the quality of the environment. A threshold decision determines whether an EIS will be required, and this depends upon whether the proposal is likely to have a probable, significant, adverse, environmental impact. Case law indicates that "significant" in this context means "more than moderate".
6. New Friends' basic position on this appeal is that the grading ordinance is violated because the project is too extensive, and that the goals of the project are not accomplished. They urge that the City do a smaller project, eliminating the berms and cutting less into the soil. They argue also that the measurements of the city were wrong and that the plans should be done over. The basic legal thrust of their arguments is that the grading ordinance, particularly in landslide hazard areas, mandates that impacts be minimized. However, KCC 18.24.280D provides in part:

2. A landslide hazard area located on a slope 40 percent or steeper may be altered only if the alteration meets the following requirements:

- a. The development proposal will not decrease slope stability on contiguous properties; and
- b. Mitigation based on the best available engineering and geological practices is implemented which either eliminates or minimizes the risk of damage, death, or injury resulting from landslides; ...

Neither buffers nor a sensitive area tract is required if the alteration meets the standards of subsection D2.

The Examiner cannot accept New Friends' position on compliance with the grading ordinance. It appears that the City has gone to great lengths in planning the project so as to be safe and effective in carrying out the goal of the project to provide privacy to the public and to the immediate neighbors of the park. The question whether to do more or less grading is not a legal question but one of policy for the City Council to make. New Friends have made their position known to the City, and it has been rejected. The Examiner cannot require the City to accept it under the facts of this case.

7. New Friends urge that if the permit is to be approved, additional conditions should be imposed. They ask for seasonal limits on the use of heavy equipment, preparation of a drainage analysis, improved erosion controls, monitoring of plantings and improvements in the vacant park areas to the northeast and southeast of the trail.

The City established that the soil in this area consists of loosely compacted sand and gravel, and that there was no evidence of seepage on the face of the slope. Under these circumstances a drainage study was deemed to be unnecessary. From the evidence, the Examiner agrees. For the same reason, restrictions on the use of heavy equipment in wet weather are unnecessary.

The plans for the project contain extensive erosion controls which were supplemented by suggestions made by New Friends' expert witness, Colleen Clayton. No further conditions to mitigate possible erosion are indicated.

Many of the plantings to be placed on the site are to be done in-house by the Park Department. With its ongoing presence in the park, the plantings will be monitored as part of park maintenance. The Examiner agrees that monitoring of new plantings is an important element of park construction, and is confident that this will occur. The vegetation management plan calls for monitoring of planting to assure survival. This too is the responsibility of the Park Department. No further conditions on the permit are indicated.

New Friends request that the scope of the project be expanded to the northeast and southeast cannot be ordered by the Examiner. The scope of the project is a legislative question for the City Council, not a legal question. The Examiner would be intruding on the prerogatives of the Council in ordering an expansion of the improvement.

8. The appeals of Anne McKinley and Sally Swantz must be denied. They base their objections to the proposal on the grading ordinance and SEPA, but the decision not to provide space for Ms. McKinley's wall presents no legal question for the Examiner. The improvement is totally within the park, and the berm is constructed at this location to achieve the goal of the project to enhance privacy.

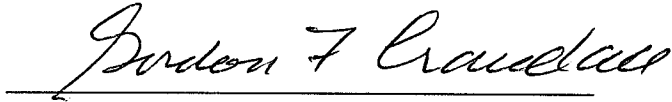
Ms. Swantz's concern for possible ponding of water on her property is unfounded. The soil here is sufficiently porous to dissipate any storm water which might reach the lower elevations near her site. The City has agreed to grade the berm so as to provide positive flow of storm water to the west, and this should be made a condition of any contract for construction of the improvement. There is no legal basis to require the City to do more at this location.

9. The Examiner has carefully considered all other objections to the permit and the City's plans, and finds them to be without merit. All three appeals of the grading permit and the DNS should be denied.
10. Any finding of fact which is deemed to be a conclusion of law is hereby adopted as such.

DECISION

The appeals of New Friends, Anne McKinley and Sally Swantz from the issuance of a grading permit and DNS for the Upper Bluff Trail improvement are DENIED.

Dated this 17th day of August, 1999



Gordon F. Crandall
Hearing Examiner Pro Tem

Attachment A

EXHIBIT LIST

**Richmond Beach Saltwater Park Upper Bluff Trail
Improvements
(Project No. 1999-000578)**

**SHORELINE HEARING EXAMINER PRO TEM
APPEAL HEARING
July 28, 1999**

- Exhibit A** **New Friends of the Richmond Beach Saltwater Park Bluff Trail
appeal of Grading Permit Approval with Conditions and
SEPA Threshold Determination of Nonsignificance
Dated July 13, 1999
Received in City Clerk's Office on July 13, 1999**
- Exhibit B** **Anne McKinley and Sally Swantz appeal of Grading Permit
Approval with Conditions and SEPA Threshold Determination
of Nonsignificance
Dated July 13, 1999
Received in City Clerk's Office on July 13, 1999**
- Exhibit C** **Hearing Memorandum of City of Shoreline
Submitted by Gabe Snedeker, Land Use/Environmental Planner,
City of Shoreline
Dated July 21, 1999
Received in City Clerk's Office on July 21, 1999**
- Exhibit D** **New Friends of the Richmond Beach Saltwater Park Bluff Trail
request for continuance of appeal hearing
Dated July 21, 1999
Received in City Clerk's Office by fax on July 21, 1999**
- Exhibit E** **Memorandum from Eric Torskey, Administrative Assistant, to
Jon Jordan, Project Engineer, City of Shoreline (regarding
Exhibit D)
Dated and distributed July 22, 1999**

- Exhibit F** **Memorandum to Shoreline Hearing Examiner Pro Tem from Jon Jordan, Project Engineer, City of Shoreline (regarding Exhibit D)**
Dated July 23, 1999
Received in City Clerk's Office by electronic mail on July 23, 1999
- Exhibit G** **Letter from Eric Torskey, Administrative Assistant, to Michael Painchaud and R. M. Erickson (regarding Exhibit F)**
Dated and mailed July 23, 1999
- Exhibit H** **Memorandum to Shoreline Hearing Examiner Pro Tem from New Friends of the Richmond Beach Saltwater Park Bluff Trail (regarding Exhibit F)**
Dated July 26, 1999
Received in City Clerk's Office by fax on July 26, 1999
- Exhibit I** **Letter to Shoreline Hearing Examiner Pro Tem from Faith L. Lumsden**
Dated July 26, 1999
Received in City Clerk's Office by fax on July 26, 1999
- Exhibit J** **Shoreline Hearing Examiner Pro Tem Gordon Crandall's order denying motion for continuance**
Dated July 26, 1999
Received in City Clerk's Office by fax on July 26, 1999
- Exhibit K** **Letter from Eric Torskey, Administrative Assistant, to Michael Painchaud and R. M. Erickson (regarding Exhibit J)**
Dated and mailed July 26, 1999

Received at Appeal Hearing:

- Exhibit L** **"Richmond Beach Saltwater Park Upper Bluff Trail Improvements"**
Photocopies of overhead transparencies used by Gabe Snedeker, Land Use/Environmental Planner, City of Shoreline, in presentation to the Hearing Examiner Pro Tem
Not dated
- Exhibit M-1** **"Proposed Section Lot #8"**
18" x 12" mounted photocopy of Cosmopolitan Engineering Group landscape architectural illustration used by R. M. Erickson in presentation to the Hearing Examiner Pro Tem
Not dated

- Exhibit M-2** **“Lot – 8 Section”**
18” x 12” mounted photocopy of Cosmopolitan Engineering Group
landscape architectural illustration used by R. M. Erickson in
presentation to the Hearing Examiner Pro Tem
Not dated
- Exhibit M-3** 18” x 12” mounted landscape architectural illustration used by R. M.
Erickson in presentation to the Hearing Examiner Pro Tem
Not dated
- Exhibit M-4** 18” x 12” mounted photocopy enlargement of part of a Cosmopolitan
Engineering Group landscape architectural illustration used by
R. M. Erickson in presentation to the Hearing Examiner Pro Tem
Not dated
- Exhibit N** Receipt from Aurora Rents, Inc. used by Michael Painchaud in
presentation to the Hearing Examiner Pro Tem
Dated July 26, 1999
- Exhibit O** “Page from Sensitive Areas Map Folio, King County, WA, December
1990”
11” x 17” photocopy used by Michael Painchaud in presentation to
the Hearing Examiner Pro Tem
- Exhibit P** Slope Stabilization and Erosion Control Using Vegetation: A Manual
of Practice for Coastal Property Owners
Washington State Department of Ecology publication submitted by
Nancy Mohrman
Dated May 1993
- Exhibit Q** Vegetation Management: A Guide for Puget Sound Bluff Property
Owners
Washington State Department of Ecology publication submitted by
Nancy Mohrman
Dated May 1993
- Exhibit R** Surface Water and Groundwater on Coastal Bluffs: A Guide for
Puget Sound Property Owners
Washington State Department of Ecology publication submitted by
Nancy Mohrman
Dated June 1995
- Exhibit S** Written copy of testimony to Hearing Examiner Pro Tem by Nancy
Mohrman
Dated July 28, 1999

- Exhibit T** **Resume of Colleen Clayton, CPESC**
Submitted by Colleen Clayton, CPESC
Not dated
- Exhibit U** **Written copy of testimony to Hearing Examiner Pro Tem by Colleen**
Clayton, CPESC (plus attachments)
Dated July 28, 1999
- Exhibit V** **Photocopy of June 22, 1999 letter to Shoreline Hearing Examiner**
Robert Burke from Keith W. Dearborn
Submitted by Ian Sievers, City Attorney, City of Shoreline
- Exhibit W** **Photocopy of June 28, 1999 letter to Keith W. Dearborn from**
Shoreline Hearing Examiner Robert Burke
Submitted by Ian Sievers, City Attorney, City of Shoreline

Received after Appeal Hearing:

- Exhibit X** **Letter from Eric Torskey, Administrative Assistant, to Michael**
Painchaud and R. M. Erickson
Dated and mailed July 30, 1999
- Exhibit Y** **Declaration of Daniel Bretzke (regarding Exhibit U)**
Dated August 4, 1999
Received in City Clerk's Office on August 4, 1999

Received at August 10th meeting for oral arguments:

- Exhibit Z** **Letter from Reid Speegle, Tri-County Land Surveying Company, to**
Michael Painchaud submitted by Faith Lumsden
Dated August 5, 1999
- Exhibit AA** **Photocopy from a Washington State Department of Transportation**
document submitted by Faith Lumsden
Not dated
- Exhibit BB** **"Additional Conditions to Permit" submitted by Ian Sievers, City**
Attorney, City of Shoreline
Dated August 10, 1999
- Exhibit CC** **Résumé of Robert M. Erickson submitted by R. M. Erickson**
Not dated

Received after August 10th meeting for oral arguments

**Exhibit DD Letter to Shoreline Hearing Examiner Pro Tem from Gabe Snedeker,
Land Use/Environmental Planner, City of Shoreline**

Dated August 11, 1999

Received in City Clerk's Office on August 11, 1999

**Exhibit EE Letter to R. M. Erickson from Eric Torskey, Administrative Assistant
(regarding Exhibit DD)**

Dated and mailed August 11, 1999